REG. v. ANG TIAN SENG

[A. Cr. J. (Tan Ah Tah J.) December 4, 1957]

[Singapore — Special Case No. 1 of 1957]

Gaming — Public lottery — Whether "Chap Ji Ki" is a lottery — Common Gaming Houses Ordinance (Cap. 114) s.4(c).

This was a case stated by a Magistrate under the provisions of section 306 of the Criminal Procedure Code (Cap. 132). The charge against the accused was that he assisted in the carrying on of a public lottery, to wit, "Chap Ji Ki" and that he thereby committed an offence punishable under section 4(c) of the Common Gaming Houses Ordinance. It was proved at the hearing before the Magistrate that the accused was walking along the road when he was stopped by two detectives. Thereupon the accused dropped a packet of cigarettes which was picked up by one of the detectives, and inside this packet was found a piece of paper rolled up in a cellophane paper. This piece of paper was later examined by an expert witness who described it as a Collector's Schedule used in the transaction known as "Chap Ji Ki" which he explained in some detail. At the close of the case for the prosecution, counsel for the defence submitted that on the evidence of the expert witness "Chap Ji Ki" was not a lottery and that therefore the accused had no case to answer. The learned Magistrate agreed with the submission and the accused was accordingly acquitted and discharged. Subsequently, on the application of the Deputy Public Prosecutor, the learned Magistrate stated this case, the question for the opinion of the Court being whether the said determination was correct in point of law.

In his grounds of decision the learned Magistrate raised two points: (i) in "Chap Ji Ki" the distribution of prizes is not determined by chance or lot but is dependent upon the judgment of the promoter; and (ii) since distribution of money or money's worth is one of the essential elements of a lottery, he took the view that if there is no distribution there is no lottery.

Held: (1) in "Chap Ji Ki" as a rule the least backed combination is the one that is declared to be the winning combination and it is a pure matter of chance which combination will have the least number of stakers, as they are called, on any given day. Therefore, when the promoter purports to choose the least backed combination, his choice is really dependent upon chance;

(2) the fact that on certain occasions no money's worth is distributed does not make "Chap Ji Ki" any the less a lottery. The important point is what the intending participants conceive to be the nature of the scheme. It is not necessary that the scheme should be fully implemented before it can be held to be a lottery;

(3) the determination of the learned Magistrate was not correct in point of law. He should have held that the transaction in question was a lottery and called upon the accused to enter on his defence.

Cases referred to:—

(1) *Lim Seah Peng v. Public Prosecutor* (1957) M.L.J. 5.

(2) *R. v. Latip bin Haidin* (1935) M.L.J. 84.

CASE STATED.

A. V. Winslow (Solicitor General) for the Crown.

L. Rayner amicus curiae.

Cur. Adv. Vult.

Tan Ah Tah J. : — This is a case stated by a Magistrate under the provisions of section 306 of the Criminal Procedure Code.

The charge against the accused was that he assisted in the carrying on of a public lottery, to wit, Chap Ji Ki and that he thereby committed an offence punishable under section 4(c) of the Common Gaming Houses Ordinance (Cap. 114). It was proved at the hearing before the Magistrate that the accused was walking along the road when he was stopped by two detectives. Thereupon the accused dropped a packet of cigarettes which was picked up by one of the detectives. Inside this packet was found a piece of paper rolled up in cellophane paper. This piece of paper was later examined by an expert witness who described it as a Collector's Schedule used in the transaction known as Chap Ji Ki which he explained in some detail. At the close of the case for the prosecution, counsel for the defence submitted that on the evidence of the expert witness, Chap Ji Ki is not a lottery and that therefore the accused had no case to answer. The learned Magistrate agreed with this submission and the accused was accordingly acquitted and discharged. Subsequently, on the application of the Deputy Public Prosecutor, the learned Magistrate stated this case, the question for the opinion of this Court being whether the said determination was correct in point of law.

The expert witness described Chap Ji Ki and explained its *modus operandi* in the following words:—

"Chap Ji Ki is something like a public lottery. Numerals from 1 to 12 are used making 144 combinations. All that a person who wishes to stake on Chap Ji Ki has to do is to put down the combination chosen and the amount of his stake on a piece of paper. This piece of paper is known as a Chap Ji Ki staking slip. This slip is handed to a Collector with the amount of the stake. The Collector after having collected all the Chap Ji Ki staking slips will make out a Schedule. This Schedule shows all the 144 combinations. The stakes on each combination are shown on the Schedule. At a glance at this Schedule the Collector can say which combination is backed and for how much. Certain collectors do not know how to make out a Schedule. They engage a Schedule writer to write out a Schedule for them. The Collector deposits the Schedule at a certain pre-arranged spot. A Runner picks it up from this spot and deposits it at another pre-arranged spot. The Chief Runner picks it up from this spot and takes it to the Promoter of the Chap Ji Ki. The Promoter having received all the Schedules will make up a Grand Schedule. A Grand Schedule is similar to an ordinary Schedule but it contains all the bets received for that day. Chap Ji Ki is a daily event. From his Grand Schedule the Promoter can see which of the 144 combinations are backed that day and the amount of the stakes they carry. The Promoter chooses the combination least backed and declares that combination as the winning combination for that day. Then the Promoter will print result slips. These result slips will be taken to the runners by the Chief Runner and the Runners will take them to the Collectors who will distribute them to the stakers. If a staker on checking finds that he has won his bet he will go to the Collector to make his claim. The odds are 100 to 1 in cash. The Collector makes out an account slip and settles his account with the Promoter. The money staked by the stakers remains with the Collector until the result is out. The total amount of the bets on a Collector's Schedule is shared between the Collector and the Promoter. The Collectors pay out the amount due to the stakers who have won the bets. The remainder after paying the winning bets is shared between the Promoter and the Collector. And if the amount in the

Collector's hand is not enough to pay a winning bet the Collector will ask the Promoter to pay him half of the amount due to the staker. The Promoter has another type of runner whose duty is to collect money from the Collector or to pay to the Collector as the case may be. The Collector knows the Promoter but the Collector may not know the place of operation of the Promoter. The runner may know the Promoter but again he may not know the place of operation. The Chief Runner is paid by the Promoter but ordinary Runners are paid by the Collector. Runners are paid $4 and upwards for one collection. Chief Runners are paid from $12 upwards. A Chief Runner is usually a relative of the Promoter or a partner. There are no dates on Chap Ji Ki staking slips. Staking slips remain with the Collectors. A time limit is set for winnings to be collected. Beyond this time limit no claims are entertained. A Chap Ji Ki staking slip is valid for one day only. They are destroyed by Collectors after the time limit is up. The result of the Chap Ji Ki is around about 10.00 a.m. on the day after the day of stakings. In addition to having runners Collectors have Agents. An Agent collects staking slips for the Collector. After collecting the slips an Agent prepares an All Record Staking Slip i.e., he will put down all the bets on a long piece of paper. It is quite different from a Schedule. Bets are merely copied down on the All Record Staking Slip. The Agent will then deposit the All Record Staking Slip at a pre-arranged spot from where the Collector's runner will pick it up. The staking slips are kept by the Agent in this case. Account slips will be handed to the Agent by the Collector's runner. An Agent is paid 20% of the amount of stakes collected by him. On top of that he gets tips from the stakers who have won. Bets are paid by the Collector through his Accountant. The Agent gets his fixed 20% irrespective of whether the Collector or Promoter wins or loses. There is no date on this All Record Staking Slip. Of all the Chap Ji Ki documents only result slips bear a date. The Agent destroys the staking slips in this case. No date is necessary on a Schedule either but sometimes it is dated."

After the expert witness had been examined-in-chief and cross-examined, the learned Magistrate asked him a number of questions. These questions and the answers to them are set out below :—

"*Q.* So in Chap Ji Ki the Promoter deliberately picks the winning numbers?

A. Yes.

Q. The winning combination is not determined by chance or lot?

A. Yes, that is so.

Q. There is no element of chance at all as far as the Promoter is concerned? The Promoter declares the winning number at his will and fancy?

A. Yes.

Q. He may then pick a combination of numbers which is not backed at all?

A. Yes.

Q. In that case he would not have to pay out any money at all?

A. Yes. He would swallow all the collections.

Q. So there may be days on which he does not pay out anything?

A. Yes.

Q. There is therefore a definite element of cheating?

A. Yes. Definitely.

Q. The staker is entirely at the mercy of the Promoter?

A. Yes.

Q. In Chap Ji Ki odds are fixed — 100 - 1?

A. Yes.

Q. And these odds are paid out irrespective of the total amount of the stakes collected by the Promoter?

A. Yes.

Q. The odds paid have no relationship at all to the total pool?

A. That is so."

The witness was then re-examined and stated in the course of his re-examination :—

"In the case of the staker it is a game of chance. Some stakers know it is a swindle but some don't. Stakers select their combination on whims and fancies. Some go by dreams, some pray for it and some keep a record of the daily results and go by them. There is a riddle at the back of the result slip. They try to guess it. In spite of the fact that Chap Ji Ki is a great swindle stakers go on staking hoping to win by chance."

With the permission of the Court, counsel for the defence then asked the witness three further questions. These questions and the answers to them are as follows :—

"*Q.* The majority of the stakers know that Chap Ji Ki is a swindle?

A. Yes.

Q. Do they know that as a rule the least backed combination will be declared as a winning number?

A. Yes.

Q. They know the winning combination will not be picked out by chance — say from a hat?

A. Yes, they know that."

The learned Magistrate has, in his very elaborate grounds of decision, stated the reasons why he has reached the conclusion that Chap Ji Ki, as described by the expert witness, is not a lottery. In my view, some of these reasons are not valid, as can be seen from the judgment in *Lim Seah Peng v. Public Prosecutor*[1] where similar reasons were discussed by Thomson J. (as he then was). So far as these reasons are concerned it is only fair to say that this judgment was not available to the learned Magistrate at the trial.

There still remain, however, two points of substance which have been raised by the learned Magistrate in his grounds of decision. Before considering them it is convenient to refer to the definition of lottery. The Common Gaming Houses Ordinance defines a lottery as follows :—

"'Lottery' includes any game, method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same is held, drawn, exercised or managed within or without the Colony."

The first point of substance raised by the learned Magistrate is that in the case of Chap Ji Ki the distribution of prizes is not determined by chance or lot but is dependent upon the judgment of the promoter. It will have been seen from the evidence of the expert witness that after all the participants have hazarded their stakes, the promoter will as a rule select what the witness referred to as the "least backed combination" and announce that it is the winning combination. It is also clear from the evidence of this

witness that the majority of participants know that as a rule the least backed combination is the one that will be declared to be the winning combination. On this evidence the learned Magistrate has stated that, in his view, the choice of the winning combination is made after due deliberation by the promoter and that therefore the distribution of the prizes is not determined by chance or lot. This is one of the reasons why he held that the transaction in question was not a lottery. Now it is clear that until the stakes have been hazarded by all the participants, not even the promoter will know which will be the least backed combination. In my opinion it is a pure matter of chance which combination will have the least number of stakers, as they are called, on any given day. It follows, therefore, that when the promoter purports to choose the least backed combination for the purpose of declaring it to be the winning combination, his choice is really dependent upon chance.

It may be observed at this stage that in Chap Ji Ki as described by the expert witness the majority of the participants are competing with one another to be among the favoured few who have staked their chances on the least backed combination. What is done by one participant or a group of participants may affect or influence the chances of the other participants or other groups of participants. In the final analysis it is chance which determines how the prizes are to be distributed.

I turn now to consider the other point of substance which has been raised by the learned Magistrate. According to the expert witness there are occasions when no stakes have been hazarded on some of the 144 combinations and the promoter may and does sometimes select one of such combinations as the winning combination. In that event there are no winners and no prizes are distributed. Since distribution of money or money's worth is one of the essential elements of a lottery, the learned Magistrate takes the view that if there is no distribution there is no lottery. The question whether, in order to constitute a lottery, there should be an actual distribution of money or money's worth was considered by a Court of three Judges in the Colony in the case of *Rex v. Latip bin Haidin*[2]. In that case the appellant had been convicted by a Magistrate on two charges, one of selling lottery tickets and the other of assisting in the carrying on of a public lottery. The tickets were those of a lottery organised by the Penang Turf Club on a race run at Penang. It was proved that the appellant's employer, who was a member of the Penang Turf Club, had purchased 210 tickets in the lottery and that the appellant had sold some of these tickets to persons who were not members of the Penang Turf Club. In dismissing the appellant's appeal from his conviction the Court held that a person may make use of tickets in a private lottery for the purpose of promoting or organising a separate and distinct lottery of his own, and if he does so, then such subsidiary lottery is deemed to be a public lottery until the contrary is proved, and will subject persons assisting in carrying it on or selling tickets therein to the penalties prescribed by the Common Gaming Houses Ordinance. Now it would appear that in fact no money was distributed as apparently none of the 210 tickets drew a prize. On this point Huggard C.J. said (at page 86):—

> "It may be suggested, in view of the definition of the term Lottery in section 2 of the Ordinance, that there cannot be a lottery unless there is an actual distribution or allotment of money or money's worth. I do not think that such a suggestion should be accepted."

Terrell J. in dealing with the same point, said (at page 89):—

> "It is therefore unnecessary, in my opinion, that in order to constitute a lottery within the meaning of the local Ordinance there should be an actual distribution or allotment of a prize or prizes. To take a simple illustration: a Missing Word or other similar form of competition is organised by a newspaper, a prize being offered for a correct solution. The competition is none the less a lottery if there should be no correct solution received and consequently no prize awarded. If the contrary view were to prevail it would mean that no prosecution could be ever commenced under the Ordinance in respect of any matter arising out of a lottery unless and until it could be shown that a prize or prizes had been distributed or allotted. I should find it difficult to believe that such a result was ever contemplated by the Legislature."

I respectfully adopt the views expressed by Huggard C.J. and Terrell J. In my opinion the fact that on certain occasions no money or money's worth is distributed does not make Chap Ji Ki any the less a lottery. The important point is what the intending participants conceive to be the nature of the scheme. It is in my opinion not necessary that the scheme should be fully implemented before it can be held to be a lottery.

It follows from the foregoing that in the opinion of this Court the determination of the learned Magistrate was not correct in point of law. He should have held that the transaction in question was a lottery and called upon the accused to enter on his defence. However, Mr. Winslow, who appeared for the Crown, has stated that it is not intended to take any further action against the accused and consequently no order is made in that respect.

I am indebted to Mr. Winslow and to Mr. Rayner, who appeared as *amicus curiae*, for the assistance which they have rendered to the Court in this matter.

Case answered.